IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1430 OF 2003

Babulal Bhikamchand Dhoke ... Applicant

versus

Dinesh Hastimal Parmar & anr. ... Respondents

...

Mr. R.M. Agarwal, for the Applicant.

Mr. R.C. Makhija, for Respondent No.1, amicus curaie.

Mr. V.B. Konde Deshmukh, A.P.P., for the State.

Respondent No. 1 in person.

...

CORAM : A.M.KHANWILKAR,J.

2nd February 2005

P.C.:

. Heard Counsel for the parties and Respondent No. 1, who appears in person. Rule. Rule made returnable forthwith by consent. Mr. Makhija appears for Respondent No. 1 as amicus curiae. Mr. Konde Deshmukh, A.P.P., waives notice for Respondent No.1. I have heard

Respondent No.1 in person also. As short point is involved, petition taken up for final hearing forthwith by consent.

2. The short question that arises in this petition is about the appropriateness of the view taken by the J.M.F.C., Court No. 6, Pune, dated 10th September 2003, below Exhibit 41 in C.C. No. 1282/2000. It is not necessary to advert to the background in which criminal action has been initiated between the parties. Suffice it to observe that evidence of the complainant has progressed till cross-examination. The Court below has exhibited certain documents at Exhibits 37, 39, 40, 42, 43 and 44. That was done without notice to the other side. In that backdrop, grievance was made by the Respondents that the documents so exhibited should be de-exhibited. The Court below has observed that although there is no provision for de-exhibiting, it will neglect the said documents from consideration which will tantamount to de-exhibiting all those documents. The Petitioner takes exception to this observation.

3. Indeed, after hearing parties and perusing the record, it appears that the procedure adopted for exhibiting the documents in question is unacceptable. Besides, even though the trial Court rightly observed that there is no provision for de-exhibiting the documents, but still noted that those documents will not be taken into account. In the peculiar facts of this case, in the interest of justice, the appropriate course is to direct the lower Court to permit the parties to adduce necessary evidence, so as to prove the documents in question for being exhibited on record. This is necessary because my attention is rightly invited to the evidence of P.W.1 which makes reference to the copy of summons and the petition which was placed on record. Besides, now, it transpires that the complainant has placed on record certified copies of the relevant documents. In the circumstances, the trial Court while ignoring the exhibit numbers given earlier may permit both the parties to prove the said documents so as to be exhibited afresh. Only this course can do substantial justice to the parties. Petition is disposed of on the above terms.

4. The trial Court to ensure that the criminal case is decided as expeditiously as possible, preferably within six months from the date of receipt of writ of this Court. R. & P. be returned forthwith.

5. The Court expresses word of appreciation for Mr. Makhija, who has appeared as amicus curiae and gave able assistance to the Court.

(A.M.KHANWILKAR,J.)